

1
2 BILL NO. S-88-11- //

3 SPECIAL ORDINANCE NO. S- 177-88

4 AN ORDINANCE approving Contract for
5 Res. 6118-88, Water Construction
6 Maintenance Street Cuts - Pkg. VIII
7 between Gaines Construction Co. and
8 the City of Fort Wayne, Indiana, in
9 connection with the Board of Public
10 Works and Safety.

11 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
12 THE CITY OF FORT WAYNE, INDIANA:

13 SECTION 1. That the Contract Res. 6118-88, Water
14 Construction Maintenance Street Cuts - Pkg. VIII by and
15 between Gaines Construction Co. and the City of Fort Wayne,
16 Indiana, in connection with the Board of Public Works and
17 Safety, is hereby ratified, and affirmed and approved in all
18 respects, respectfully for:

19 the improvement and restoration of
20 Water Construction and Maintenance
21 Dept. Street Cuts on Tyler Avenue from
22 State Blvd. to its northern terminus;

23 involving a total cost of Forty-Three Thousand Two Hundred Six
24 and no/100 Dollars (\$43,206.00).

25 SECTION 2. Prior Approval has been requested from
26 Common Council on October 25, 1988. Two copies of said
27 Contract are on file with the Office of the City Clerk and
28 made available for public inspection, according to law.

29 SECTION 3. That this Ordinance shall be in full force
30 and effect from and after its passage and any and all
31 necessary approval by the Mayor.

32
Samuel J. Talarico
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6118-88

WATER CONSTRUCTION MAINTENANCE STREET CUTS - PKG. VIII

BOARD ORDER NO. 143-88

WORK ORDER NO. 10,752

THIS CONTRACT made and entered into in triplicate this 2nd day of November, 1988, by and between GAINES CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

TYLER AVENUE From State Blvd. to its Northern Terminus

all according to RES. NO. 6118-88, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$ 43,206.00. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract ~~within~~ by 10/30/88 - 11/25/88 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Henry Yairns Sr
_____, President

BY: Daryl Dimes
_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY: PHH

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

Angela S. Derheimer

Angela S. Derheimer
Director of Public Works

Daniel G. Heath

Daniel G. Heath
Director of Public Safety

C. David Silletto

C. David Silletto
Director of Administration & Finance

ATTEST:

Helen V. Gochenour

Helen V. Gochenour, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA)

)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 2nd day of Nov., 1988, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Angela S. Derheimer, Daniel G. Heath and C. David Silletto, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Helen V. Gochenour, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann

NOTARY PUBLIC

Carolyn S. Eschmann

Type or Print Name of Notary

My Commission Expires: 6-16-91

Approved by the Common Council of the City of Fort Wayne on day of _____, 19____.

Special Ordinance No. _____.

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State,
this 26 day of October, 1988, personally appeared the
within named Henry Gaines, Sr. & Darryel Gaines, who being by me first duly
sworn upon their oaths say that they are the President
and Secretary respectively, of Gaines Construction Corp.
and as such duly authorized to execute the foregoing instrument and
acknowledged the same as the voluntary act and deed of _____
_____ for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official
seal.

Helen H. Langmeyer
NOTARY PUBLIC

HELEN H. LANGMEYER
Type or Print Name of Notary

MY COMMISSION EXPIRES: 9/29/90



THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: that

Gaines Construction Company, Inc.
217 West Washington Center Road
Fort Wayne, Indiana 46825

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Contractor, and,
National American Insurance Company
5550 West Touhy Avenue
Skokie, Illinois 60077

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

City of Fort Wayne
Fort Wayne, Indiana

(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of

Forty Three Thousand Two Hundred Six Dollars no/cents Dollars (\$ 43,206.00),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated October 12, 19 88, entered into a contract with Owner for
(Here insert full name, address and description of project)

Res. #6118-88, Water Construction Maintenance Department Street Cuts-Pkg.8

in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that
Gaines Construction Company, Inc.

217 West Washington Center Road
Fort Wayne, Indiana 46825

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Principal, and
National American Insurance Company

5550 West Touhy Avenue
Skokie, Illinois 60077

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

City of Fort Wayne
Fort Wayne, Indiana

(Here insert full name and address or legal title of Owner)

as Obligor, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the
amount of Forty Three Thousand Two Hundred Six and no/100

(Here insert a sum equal to at least one half of the contract price)

Dollars (\$43,206.00),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated October 12, 1988, entered into a contract with Owner for
(Here insert full name, address and description of project)

Res. #6118-88, Water Construction Maintenance Department Street Cuts-Pkg.8

in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NATIONAL AMERICAN INSURANCE COMPANY
OMAHA, NEBRASKA

POWER OF ATTORNEY

PRINCIPAL Gaines Construction Company, Inc.

EFFECTIVE DATE October 20, 1988

217 West Washington Center Road

Fort Wayne, Indiana 46825

(STREET ADDRESS)

(CITY)

(STATE)

(ZIP CODE)

CONTRACT AMOUNT _____

AMOUNT OF BOND \$ 43,206.00

POWER NO. **NB** 17036

KNOW ALL MEN BY THESE PRESENTS: That the National American Insurance Company, a corporation duly organized under the laws of the State of Nebraska, having its principal office in the city of Chandler, Oklahoma, pursuant to the following resolution, adopted by the Board of Directors of the said Company on the 8th day of July, 1987, to wit:

"Resolved, that any officer of the Company shall have authority to make, execute and deliver a Power of Attorney constituting as Attorney-in-Fact, such persons, firms, or corporations as may be selected from time to time.

Be It Further Resolved, that the signature of any officer and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such powers so executed and certified by facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached." National American Insurance Company does hereby make, constitute and appoint Jerry Bey

State of Illinois

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf, and its act and deed, as follows:

The obligation of the Company shall not exceed one million (\$1,000,000.00) dollars.

And to bind National American Insurance Company thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officer of the National American Insurance Company, and all the acts of said Attorney(s) pursuant to the authority herein given, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the National American Insurance Company has caused these presents to be signed by any officer of the Company and its Corporate Seal to be hereto affixed.

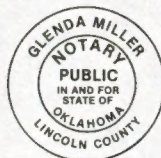
NATIONAL AMERICAN INSURANCE COMPANY



W. Brent LaGere
W. Brent LaGere, Chairman & Chief Executive Officer

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

On this 8th day of July, A.D. 1987, before me personally came W. Brent LaGere, to me known, who being by me duly sworn, did depose and say; that he resides in the County of Lincoln, State of Oklahoma; that he is the Chairman and Chief Executive Officer of the National American Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name, thereto by like order.



Glenda Miller
Notary Public
My Commission Expires August 30, 1991

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

I, the undersigned, Assistant Secretary of the National American Insurance Company, a Nebraska Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force.

Signed and Sealed at the City of Chandler.

Dated the 20th day of October, 19 88



Winifred E. Mendenhall
Winifred E. Mendenhall, Assistant Secretary

Read the first time in full and on motion by James Stier, seconded by Redd, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 11-22-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Bradbury, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY	<u>✓</u>			
BURNS	<u>✓</u>			
GIAQUINTA				<u>✓</u>
HENRY				<u>✓</u>
LONG	<u>✓</u>			
REDD	<u>✓</u>			
SCHMIDT	<u>✓</u>			
STIER	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 12-13-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. S-177-88

on the 13th day of December, 1988,

Sandra E. Kennedy ATTEST
SANDRA E. KENNEDY, CITY CLERK

SEAL
James Stier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of December, 1988, at the hour of 11:30 o'clock 4 .M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of December, 1988, at the hour of 3:00 o'clock 4 .M., E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

Admn., Appr. _____

TITLE OF ORDINANCE Contract for Res. 6118-88, Water Construction Maintenance
Street Cuts, Pkg. VIII

DEPARTMENT REQUESTING ORDINANCE Board of Public Works & Safety

SYNOPSIS OF ORDINANCE The Contract for Water Construction Maintenance Street
Cuts - Pkg. VIII is for the improvement and restoration of Water
Construction and Maintenance Dept. Street Cuts on Tyler Avenue from
State Blvd. to its northern terminus. Gaines Construction Company
is the Contractor.

PRIOR APPROVAL RECEIVED 10/25/88

S-88-11-11

EFFECT OF PASSAGE Same as above description

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$43,206.00

ASSIGNED TO COMMITTEE _____

BILL NO. S-88-11-11

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS
REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ XXXXXXXXXX approving Contract
for Res. 6118-88, Water Construction Maintenance Street
Cuts - Pkg. VIII between Gaines Construction Co. and
the City of Fort Wayne, Indiana, in connection with the
Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) ~~(RESOLUTION)~~

YES

NO

Samuel J. Talarico

SAMUEL J. TALARICO
CHAIRMAN

Mark E. GiaQuinta

MARK E. GIAQUINTA
VICE CHAIRMAN

David C. Long

DAVID C. LONG

JAMES S. STIER

JANET G. BRADBURY

CONCURRED IN

12-13-88

Sandra E. Kennedy
Sandra E. Kennedy
City Clerk